for a three-month extension of time. Authorization to charge the requisite fee under 37 C.F.R. §§1.17(a)(3) and 1.136(a) is filed with and as part of the RCE.

REMARKS

I. Telephone Interview

The undersigned attorney wishes to thank the Examiner and Examiner Rotman on behalf of Applicants for the opportunity to discuss the Office Action during the telephone interview of March 5, 2002.

II. Claim Rejections – 35 U.S.C. §103

Claims 1-11, 18, 19, 26 and 27 are pending. As set forth in the final Office Action at page 2, the novelty rejection under 35 U.S.C. §102 under US 5,753,265 to Bergstrand et al. (the "'265 patent) and US 5,817,338 to Bergstrand et al. (the "'338 patent") has been withdrawn.

The obviousness rejection of record has been maintained. Accordingly, the pending claims are rejected under 35 U.S.C. §103 as being unpatentable over the '265 and '338 patents. Applicants respectfully submit that the '265 and '338 patents qualify as prior art under 35 U.S.C. §102(e) but have no effect as prior art in support of an obviousness rejection against the claimed invention.

Specifically, 35 USC 103(c) was amended to provide that prior art which qualifies as 102(e) art cannot be used to support an obviousness rejection if the cited prior art and invention of the application were co-owned or subject to an obligation of assignment at the time the

invention was made. The effective date of the new law is 29 November 1999 and applies to all applications filed on or after 29 November 2000.

Applicants submit that the cited '265 and '338 patents and the claimed invention were subject to an obligation of assignment at the time the invention was made. Moreover, the subject application is a continuation prosecution application ("CPA"), filed January 9, 2001, under 35 U.S.C. §153(d) based on the parent application serial no. 08/945,425, filed October 21, 1997. Therefore, 35 U.S.C. §103(c) applies to the subject application, and the '265 and '338 patents have no effect as prior art in support of the obviousness rejection of record. Accordingly, withdrawal of the rejection is respectfully requested.

The obviousness rejection under 35 U.S.C. §103 in view of US 5,330,982 to Tyers (the "'982 patent") has been maintained. The '982 patent discloses a combination therapy comprising a 5-HT receptor antagonist and a H^+,K^+-ATPase inhibitor. The two active ingredients may be administered as a single pharmaceutical composition (col. 2, lines 60-63). Alternatively, the two active ingredients may be co-administered in the form of two separate pharmaceutical compositions for simultaneous or sequential use (col. 2, lines 63-66). Preparations for oral administration may be formulated to give controlled release of one or both active ingredients (col. 10, lines 53-56).

The gist of the '982 patent is a combination therapy. The only example of the '982 patent is directed to a single dosage form, in the form of a tablet or syrup, comprising both active ingredients. The example is not directed to a controlled release formulation. Accordingly, without the benefit of hindsight, the '982 patent does not suggest the claimed invention comprising the administration of an H^+,K^+-ATPase inhibitor to induce an extended blood plasma profile of the H^+,K^+-ATPase inhibitor.

For all of the foregoing reasons, withdrawal of the rejection under 35 U.S.C. §103 in view of the '982 patent is requested.

CONCLUSION

The Remarks set forth herein are fully responsive to the final Office Action. It is respectfully submitted that claims 1-11, 18, 19, 26 and 27 are in condition for allowance, which action is earnestly solicited.

Any additional fee in connection with this response should be charged to Deposit Account No. 23-1703.

Dated: March 8, 2002

Respectfully submitted,

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Enclosure
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